

SUNSHINE LAW MEETING
MINUTES OF THE HAWAII STATE ETHICS COMMISSION

STATE OF HAWAII

Date: February 21, 2024
Time: 9:00 a.m.
Location: Held via Zoom video and audio conference
Link: Recorded video available at
https://ethics.hawaii.gov/category/commissionmeetings/comm_videos/

Public Meeting Location

Hawaii State Ethics Commission Conference Room
1001 Bishop Street
American Savings Bank Tower, Suite 970
Honolulu, Hawaii 96813

Present: State Ethics Commission Members

Wesley F. Fong, Chair (present in conference room)
Beverley Tobias, Vice Chair (via video conference)
Robert Hong, Commissioner (excused)
Cynthia Thielen, Commissioner (via video conference)

State Ethics Commission Staff

Robert D. Harris, Executive Director (present in conference room)
Kee M. Campbell, Enforcement Director (via video conference)
Bonita Y.M. Chang, Compliance Director (via video conference)
Nancy C. Neuffer, Staff Attorney (excused)
Jennifer M. Yamanuha, Staff Attorney (via video conference)
Jodi L. K. Yi, Staff Attorney (excused)
Patrick W.C. Lui, Computer Specialist (via video conference)
Jared Elster, Investigator (via video conference)
Myles A. Yamamoto, Administrative Assistant (present in conference room)

Members of the Public

Laurie Tomchak- League of Women Voters
Clyde
Chad

Laurie Wong Nowinski – Honolulu Ethics Commission
Robin Henski

CALL TO ORDER (0:00)

Chair Fong called the meeting to order at 9:05 a.m. Chair Fong, Vice Chair Tobias, Commissioner Thielen, and Commission staff were present. All commissioners and staff participating via video or audio conference confirmed no one was in the room with them at their respective remote locations.

Agenda Item No. I: Consideration and Approval of the Minutes of the January 17, 2024 Meeting (3:23)

Deferred until next meeting.

Agenda Item No. II: Directors' Report (4:11)

Compliance Director Bonita Chang reported 158 individuals completed the online self-directed ethics training and 186 individuals completed the online lobbyists' training. As part of continued outreach efforts, a flyer was sent to board and commission administrators regarding mandatory training requirements and upcoming live training sessions. Staff has also reached out to the House and Senate clerks to recommend having all new hires complete their training requirements as part of the onboarding process for new employees.

In terms of financial disclosures, Director Chang reported that in March, staff will begin contacting agencies as part of the annual updates process for state agencies, and then in May following the close of the legislative session, staff will begin updating the lists of current and new members of state boards and commissions. Director Chang noted that because 2024 is an election year, staff will also be processing candidate financial disclosures as well as regular financial disclosures.

Enforcement Director Kee Campbell reported that 67 new matters were opened and that 67 matters were closed in the past month. He noted that a large number of matters related to an issue that had been satisfactorily resolved.

Chair Fong asked if there has been an increase in the number of complaints as a result of increased training participation. Director Campbell replied he has noticed an increase in the number of Attorney of the Day inquires and complaints. Chair Fong explained that, once a person is educated by training, he/she would know something may be improper and potentially report matters. Director Campbell agreed.

Executive Director Robert Harris reported that an Analyst has been hired and will be starting in March. Additionally, he reported that staff will be working on goals and priorities for the coming year to present to the Commission.

Chair Fong expressed his thanks to Office Manager Caroline Choi and Investigator Jared Elster for their assistance in selecting new artwork for the Commission's offices.

Agenda Item No. III: Discussion of Media Reports Concerning Ethics or the Ethics Commission Since the Last Meeting (13:12)

Executive Director Robert Harris reported that media recently published articles about the upcoming Honolulu Ethics Commission meeting. Additional articles address ethics bills moving through the legislature, the charter school commission executive director, and nepotism.

Chair Fong asked if the Nepotism Law covers the legislature. Executive Director Harris replied that the law establishes a "bright line" prohibition with a transparent "good cause" exception process. The law does not currently cover the Legislature or the Judiciary. Director Harris noted that both the house and senate established internal rules prohibiting nepotism. The house rules contain a grandfather clause for existing employees. Additionally, the Judiciary has rules against nepotism. Director Harris expressed the hope that concerns about nepotism will diminish over time.

Agenda Item No. IV: 2024 Legislative Matters (17:11)

Executive Director Robert Harris reported that the Commission's budget is moving through the legislature and is scheduled for a hearing before the Senate Ways and Means Committee. The budget that was submitted is flat, and did not include a request for any new positions. Director Harris reported that the reason is that the legislature is trying to hold budgets to a 0% increase, particularly in light of fiscal priorities concerning Maui recovery.

Director Harris highlighted SB 2219. This measure is a revision to the lobbyist law. The measure would add provisions to include procurement and executive interactions under the umbrella of lobbying. The bill has been amended to remove language related to quasi-judicial agency actions and a presumption related to paid lobbyists who submit 10 or more pieces of testimony. He noted that the 10 testimony proposal seemed to have been misconstrued to mean that anyone – whether paid or not – who submitted 10 pieces of testimony, would be required to register. The result of this misunderstanding has been that SB 2219 garnered substantial negative testimony. The provision regarding the 10 pieces of testimony was removed to avoid any future continued misunderstanding.

Vice Chair Tobias asked for clarification about the 10 pieces of testimony provision. Director Harris replied that the provision was intended to apply to professional paid lobbyists and not individual members of the public.

Director Harris highlighted SB 3350. This measure would require justices, judges, and judicial nominees to file a financial disclosure with the Commission. He noted that this bill was not a part of the Commission's legislative package. He asked if the Commission has a position. He noted that currently, justices and judges are required to file a disclosure with the Judiciary, but not with the Commission. He further noted that the Judiciary opposes SB 3350 on the grounds that it is redundant and potentially unconstitutional. Director Harris disagreed with that legal analysis and noted that the Commission is actively meeting with the Judiciary about broader ethics issues. However, with respect to judicial nominees, those individuals could be required to file disclosures with the Commission, similar to how the agency administers other types of financial disclosures. Director Harris recommended that the Commission provide comments on the bill without taking a position for or against the measure. The comments would state that the Commission has the capacity to execute the requirements of the bill.

Chair Fong stated that it appears the bill seeks to expand transparency within the Judiciary. He suggested that the bill may be in response to media articles regarding a recent judicial nominee. He noted the bill is not part of the Commission's package.

Vice Chair Tobias supported the idea of providing comments without taking a position. She asked what the Judiciary's position was. Director Harris replied that the Judiciary opposes the bill as repetitive. He also noted that the Judiciary has concerns regarding enforcement due to the fact only the Judiciary has authority over judges and justices. He noted that if the Judiciary makes improvements to their disclosure process, it may satisfy the concerns of the Commission.

Chair Fong noted that the Commission has been meeting with the Judiciary, including a recent meeting with a representative of the Chief Justice. He noted the Judiciary was receptive to improving their transparency and using the Commission as a venue to help explain their efforts regarding ethics.

Commissioner Thielen asked who sponsored the bill and felt uncomfortable about providing substantive testimony. Director Harris replied that the bill was introduced by Senator Lee. He further explained that any testimony would only be to comment on the Commission's capacity to administer the law, if passed.

Chair Fong noted that the Commission will continue its dialogue with Judiciary.

Chair Fong acknowledged the presence of Laurie Wong-Nowinski of the Honolulu Ethics Commission. He asked if Ms. Wong-Nowinski had any comment regarding SB 2989. Chair Fong explained that the bill would allow the Judicial Council to nominate individuals to county ethics commission and boards if allowed by city ordinance or charter. Ms. Wong-Nowinski replied that based on her understanding, the

commissioners are appointed by the mayor and approved by the city council. She did not have any further comments but said she would take this information back to the Honolulu Ethics Commission.

Agenda Item No. V: Discussion of Ethics Oversight over the Judicial Branch (36:40)

Executive Director Harris reported that as mentioned earlier, the Commission continues to meet with the Judiciary. He noted that they are receptive to raising public awareness. He further reported that meetings will continue. He noted that the Commission has jurisdiction over employees of the Judiciary, but not judges and justices.

Agenda Item No. VI: Akana v. Hawaii State Ethics Commission and Daniel Gluck, Civil No. 18-1-1019-06 (JHA); Akana v. Hawaii State Ethics Commission, Civil No. 19-1-0379-03 (JHA); State of Hawaii, Ethics Commission v. Rowena Akana, Civil No. 20-1-0453 (BIA) (38:40)

Executive Director Harris reported on January 23, 2024, the Commission issued a press release regarding the Intermediate Court of Appeals decision to uphold the Commission's decision and issuing of fines in the Akana matter. He noted that the Respondent can still appeal to the Supreme Court. The first deadline to appeal is 30 days after the decision, which has passed. Director Harris noted that the court will grant an automatic extension upon request. He thanked the Commission for their work on this case.

Vice Chair Tobias asked if the respondent will request certiorari based on her comments in the media. Director Harris replied that it is unknown.

Agenda Item No. VII: Adjournment of Sunshine Law Meeting (43:25)

At approximately 9:49 a.m., Vice Chair Tobias made, and Commissioner Thielen seconded, a motion to adjourn the meeting. The motion carried (Fong, Tobias, and Thielen voting in the affirmative with Hong excused).

The meeting was adjourned at 9:49 a.m.

Minutes approved on March 20, 2024.